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Bail Slip

The Petitioner/Accused (Rangasamy alias Gnanaprakasam) was released on bail in and by the order of this Court dated 10.02.2000 and made in Crl.M.P.No.357/2000 in CA 85/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.08.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 85 of 2000

Rangasamy @ Gnanaprakasam ... Appellant.

Vs

State rep. by
Inspector of Police,
Kadambur Police Station,
Erode District. ... Respondent

Prayer: Appeal against the judgment passed by the learned II Additional Sessions Judge, Erode, in S.C.No. 145 of 1999 dated : 22.12.1999.(P.RC.No.19/99-J.M.I, Gobi)

For Appellant : Mr.T.Munirathina Naidu for M/s.R.T.Doraisamy.

For Respondent : Mr.V.M.R.Rajendran Addl. Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM,J)

The judgment of the II Additional District Sessions Court, Erode, made in S.C.No.145 of 1999, wherein the accused/appellant stood charged, tried and found guilty under Section 302 IPC. and awarded life imprisonment, is under challenge in this appeal.

2. The case of the prosecution is as follows:-

i.The accused/appellant was living with his wife, the deceased

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in the case, at Sathyamangalam. He was working as a cleaner in a lorry, in which, P.W.1 was working as a driver. The accused/appellant and P.W.1 were cousins. P.W.1 used to go to the house of the accused/appellant and later, he developed illicit intimacy with the wife of the accused/appellant. P.W.4 is the brother of the deceased. The fact that P.W.1 and the deceased had illicit intimacy was not known to the accused/appellant till both P.W.1 and the deceased left the place on 11.4.1999. On 12.4.1999, the accused/appellant gave a complaint at Kadambur Police Station reporting about the same. The police called P.W.1 and the deceased and also the accused/appellant, enquired them and the matter is pending.

ii. While the matter stood thus, P.W.1 and the deceased again decided to go over to some other place to eke their livelihood. Hence, P.W.1 sought the help of P.W.2 and asked him to wait with his TVS 50 moped in a particular place. On the night of 13.4.1999, P.W.2 was waiting nearby the house of the accused/appellant. At about 1.00 a.m., near the house of the accused/appellant, the deceased and P.W.1 were standing and talking with each other. At that time, P.W.4, the brother of the deceased, and P.W.3, the friend of P.W.1, were also coming to that place. They also saw P.W.1 and the deceased standing in front of the house of the accused/appellant. P.W.2 was also standing nearby with his TVS 50 moped. On seeing this, the accused/appellant questioned his wife as to where she was going. So saying, he took the wooden part of a spade and attacked her on her head and on her face. On seeing this, P.W.1 attempted to escape. The accused/appellant chased him, but he could not attack him. P.W.1 went in the moped along with P.W.2 and escaped from the place.

iii.On 14.4.1999 at about 6.00 a.m., the accused appeared before P.W.10, the Sub Inspector of Police, Kadmabur Police Station, who was on duty at that time, and gave a statement, which was recorded by him. On the basis of the said statement, a case in Crime No.19 of 1999 came to be registered by the respondent police under Section 302 of I.P.C. The first information report prepared under Ex.P-14 was despatched to the Court. At about 7.30 a.m. P.W.10 arrested the accused and recovered M.O.9, the shirt of the accused/appellant under a cover of Ex.P-15 mahazar in the presence of P.W.5.

iv.On receipt of the copy of the printed first information report, P.W.11, the Inspector of Police, Bangalapudur Police Station, took up investigation in the case, and questioned the accused/appellant at the police station. He volunteered to give a confessional statement, which was recorded by the

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investigating officer in the presence of P.W.5. The admissible part is marked under Ex.P-1, pursuant to which, he produced M.O.1. The officer recovered the same under Ex.P-2 mahazar attested by witnesses. Thereafter, the investigating officer proceeded to the scene of occurrence, made an inspection and prepared an observation mahazar under Ex.P-3 and drew a rough sketch under Ex.P-16 mahazar. He also recovered from the place of occurrence M.O.2, blood stained earth, and M.O.3, sample earth and other material objects under a cover of mahazar. Photographs, M.O.4 series, were taken and M.O.5 series are their negatives. At the place of occurrence, he conducted inquest on the dead body in the presence of Panchayatdars and witnesses and prepared Ex.P-17 mahazar. Thereafter, he issued a requisition to the doctor for conducting autopsy.

v.On receipt of the requisition, P.W.6, the Medical Officer attached to Government Hospital, Sathyamangalam, conducted autopsy on the dead body of Indira and found the following injuries:-

1.A lacerated wound on the right side of the nose including right side of the face 7cm x 3cm x 3cm.

2.Fracture on the right side of the nasal bone.

3.Fracture on the right side of the maxilla.

4.Contusion on the left side of the neck collar region. On dissection, blood clots were seen.

5.Contusion on the front of right side of the chest. Black in colour. On dissection, blood clots were seen. Hyoid bone was found intact.

6.Abrasion on the right knee 2cmx 3cm.

7.Multiple abrasions on both legs.

8.A lacerated wound on the right occipital region horizontally 4 cm x 3 cm x bone depth.

9.A lacerated wound left parietal region 6cmx5cmxbone deep. On dissection, fracture of left parietal bone was noted. Blood clots were present in the brain.

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The doctor has issued the post-mortem certificate under Ex.P-6 with his opinion that the deceased would appear to have died of shock and haemorrhage due to head injury about 24 hours prior to autopsy.

vi.In the meantime, the accused/appellant was sent to judicial remand. All the material objects recovered from the place of occurrence and from the dead body were subjected to chemical analysis by the Forensic Department. The Chemical Analyst's report under Ex.P-10 and the Serologist's report under Ex.P-11 were obtained and placed before the Court. The investigating officer, after completing investigation, filed the final report against the accused/appellant.

3. The case was committed to the Court of Sessions. Necessary charges were framed against the accused/appellant. In order to substantiate the charges levelled against him, the prosecution examined 11 witnesses and relied on 17 exhibits and 9 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the witnesses. He flatly denied them as false. No defence witness was examined. The trial Court, on hearing the submissions of either side and on a careful scrutiny of the available materials, found the accused/appellant guilty as per the charge and awarded life imprisonment. Hence, this appeal at the instance of the accused/appellant.

4. The learned counsel appearing for the appellant, inter alia, would made the following submissions:-

The lower Court has found the accused/appellant guilty on the direct evidence projected through P.Ws.1 to 3. All these witnesses were closely related to each other and thus, their evidence could be termed as interested testimony and hence, their evidence has to be scrutinised carefully. But the lower Court has failed to do so. In the instant case, P.W.1 had illicit intimacy with the deceased, who was the wife of the accused/appellant and hence, there was a complaint given by the accused, which was pending with the police and under such circumstances, it was a false case foisted upon the accused/appellant. There was also no acceptable evidence before the lower Court to find the accused/appellant guilty. Added further, the learned Counsel that even assuming that the prosecution has proved the act of the accused/appellant that he attacked his wife and caused her death, the circumstances would clearly indicate that due to sudden provocation, he has acted so. It is pertinent to point out that the occurrence has taken place at 1.00 a.m. and at that time, the accused/appellant found his wife standing outside the house and and talking with P.W.1. On an earlier occasion, she was taken away by P.W.1, due to which, the

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accused/appelant has given a complaint to the police, and the said complaint was also pending enquiry. Under such circumstances, the accused/appellant, on seeing the his wife talking with P.W.1 at that odd hour, got enraged and due to sudden provocation, he has acted so. Hence, the act of the accused/appellant, even assuming to have been proved by the prosecution, would not fall within the ambit of murder, but would come under a lesser offence and hence, it has also got to be considered by this Court.

5. The Court heard the learned Additional Public Prosecutor on the above contentions.

6. It is not in controversy that the wife of the appellant/accused, who was attacked at the scene of occurrence, succumbed to the injuries sustained by her. In order to substantiate the same, the prosecution has examined P.W.6, the doctor, who conducted post-mortem and marked the post-mortem certificate under Ex.P-6, wherein the doctor has opined that the deceased died due to the head injury sustained by her. Apart from the same, the accused/appellant never questioned the said fact either before the trial Court or before this Court and hence, it could be concluded that the deceased, Indira, died out of homicidal violence.

7. In the instant case, in order to substantiate the act of the accused that it was he, who attacked his wife with the wooden part of the spade, the prosecution has examined P.Ws.1 to 3 as witnesses to the occurrence. The lower Court has clearly marshaled the evidence and has taken the view that their evidence has got to be accepted, since it is natural, cogent and convincing and this Court has no reason to differ from the said view taken by the lower Court. The contention put forth by the learned counsel for the appellant that they are close relatives cannot be a reason to reject their testimony, since on careful scrutiny, their evidence found to be believable and acceptable. The medical evidence put forth by the prosecution has also fully corroborated the ocular testimony. Under such circumstances, the Court finds no impediment in affirming the finding recorded by the lower Court that it was the accused, who attacked his wife at the time and place of occurrence and caused her death.

8. Now coming to the nature of the act committed by the accused/appellant, the Court has to necessarily agree with the learned counsel for the accused/appellant. In the instant case, the deceased and the accused/appellant were living together. At that time, P.W.1, the cousin brother of the accused, developed illicit intimacy with the deceased, which fact came to the knowledge of the accused. Just prior to the occurrence, P.W.1 has taken away the deceased from the matrimonial home. On coming to know about the same, the accused/appellant has also given a complaint before the police, who called the parties and enquired them and pending enquiry, P.W.1 and the deceased has planned to go away once again. In order to carry out their plan, at the time of occurrence, the deceased has come out of

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her house and was taking with P.W.1. At that time, P.W.2 was also standing near the house of the accused/appellant with his TVS 50 moped. At that juncture, P.W.4, the brother of the deceased and P.W.3, friend of P.W.1 were also coming towards the place. Hence, from the above, it would be quite clear that on that day during night hour, the deceased wanted to carry out the plan of running away with P.W.1. It is pertinent to point out that the appellant, who was the husband of the deceased, on seeing his wife talking with P.W.1 at that odd hour, could not control his feelings and hence, under such circumstances, due to sudden provocation, he has attacked his wife and also chased P.W.1, who escaped from the place of occurrence with P.W.2 and thus, the act of the accused/appellant was neither pre-planned nor premeditated or not even with any intention to cause the death of his wife. Hence, the Court is of the considered opinion that the act committed by the accused/appellant would not fall within the ambit of murder but would under Section 304 Part-II IPC. awarding rigorous imprisonment for a period of 5 years.

9. In the result, the conviction and sentence imposed upon the accused/appellant under Section 302 IPC. are set aside and he is now convicted under Section 304 Part-II IPC. awarding rigorous imprisonment for a period of five years. It is reported that the accused/appellant is on bail. The learned Sessions Judge shall take steps to commit the accused/appellant to prison the serve the remaining period of sentence. With the above modification in conviction and sentence, the appeal is disposed of.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The II Additional Sessions Judge, Erode.
2.-do- through the Principal Sessions Judge, Erode.
3.The Judicial Magistrate, Sathyamangalam,
4.-do- through the Chief Judicial Magistrate, Erode.
5.The Judicial Magistrate No.I, Coimbatore.
6.-do- through the Chief Judicial Magistrate, Coimbatore.
7.The Inspector of Police, Kadmabur Police Station, Erode District.
8.The Superintendent, Central Prison, Coimbatore.
9.The District Collector, Erode.
10.The Director General of Police, Madras.
11.The Public Prosecutor, High Court, Madras.
12.The Judicial Magistrate No.1, Gobichettypalayam.

+1cc to Mr.R.T.Doraisamy, Advocate Sr 33848

TEK (CO)
km/17.8.

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